IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

CRIMINAL MISC.APPLICATION No 4912 of 1998

For Approval and Signature:

Hon'ble MR.JUSTICE D.P.BUCH

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : YES

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the Civil Judge? : NO

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SHAMBHUBHAI MAFATLAL PATEL

Versus

STATE OF GUJARAT

Appearance:

1. Criminal Misc.Application No. 4912 of 1998

MR YV BRAHMBHATT for Petitioner No. 1-2

MR AJ DESAI, ADDL.PUBLIC PROSECUTOR for Respondent No. 1

MR US BRAHMBHATT for Respondent No. 2

CORAM : MR.JUSTICE D.P.BUCH

Date of decision: 03/04/2002

ORAL JUDGEMENT

#. The two applicants herein have preferred this application under Section 482 of the Criminal Procedure Code, 1973, for quashing Criminal Case No.133/1998

pending before the learned Chief Judicial Magistrate, Vadodara, for offence punishable under Section 420 of the I.P.C.

#. The contesting respondents preferred the aforesaid Criminal Case by way of a private complaint before the said Court on following sets of facts :-

#. The original complainant required a tractor. The present petitioner possessed the tractor and a trailer bearing number indicated in the complaint. They knew one another and, therefore, the original complainant entered into a contract with the present petitioner for the purchase of the said tractor and trailer, in accordance with the terms and condition of the contract between the two. The original complainant, according to his case in the complaint, paid an amount of Rs.45,000/as a down payment and also paid Rs.15,000/- towards the advance and Rs.5600/- towards the RTO. Tax and Premium of Insurance Company. Thereafter the original complainant, according to his case in the complaint, also paid Rs.30,000/- in two installments to the petitioners. The original complainant, therefore, said in the said complaint that he invested a total sum of Rs.95,000/- for the purchase of said tractor and trailer.

#. The complainant then alleged in the complaint that thereafter the petitioner No.1 approached the complainant and told him that he needed the tractor and trailer and, therefore, the tractor and trailer should be handed over by the complainant to the petitioners and on account of the pressure brought upon the complainant, the complainant parted with the tractor and trailer in favour of the petitioner. That, at that time the petitioner had told the complainant that they would pay a sum of Rs.75,000/- only. That, accordingly the petitioner handed over a cheque dated 21.12.1997 in a sum of Rs.51,000/- to the original complainant and also agreed to pay the remaining amount on 8.1.1998. The complainant further said in the complaint that the cheque was presented to the bank which was returned without any payment and, therefore, the complainant approached the petitioners at which the petitioners told him that they would not pay any amount and, therefore, the complaint was filed.

#. On receipt of the said complaint process was issued and the petitioners were required to appear before the said Court.

#. Feeling aggrieved by the aforesaid complaint and the

order of issuing process against the petitioners, the petitioners have preferred this application before this Court for quashing the said complaint. On the receipt of the application, notice was issued at the first instance and rule was issued thereafter. In response to the service of the rule Mr.A.J.Desai, learned APP appears on behalf of the respondent State, wherein Mr.J.U.Brahmbhatt appear for respondent No.2.

#. I have heard the learned advocates for the parties and have perused the papers.

#. In order to constitute an offence punishable under Section 420 of the I.P.C. it would be necessary for the complainant to at least make allegations in the complaint disclosing the offence of cheating. The term cheating has been defined in Section 415 of the I.P.C. which reads as under:-

"Section 415 :- Whoever, by deceiving any person, fraudulently or dishonestly induces the person so deceived to deliver any property to any person, or to consent that any person shall retain any property, or intentionally induces the person so deceived to do or omit to do anything which he would not do or omit if he were not so deceived, and which act or omission causes or is likely to cause damage or harm to that person in body, mind reputation or property, is said to "cheat"

#. According to the aforesaid definition of cheating a person can be said to have cheated the other one provided the accused person

(i) Fraudulent and was dishonestly,
(ii) Induces the complainant,
(iii) To deliver any property to any person,
(iv) or to consent that any person shall retain any property,
(v) or intentionally induces the person so deceived.
(vi) to do or omit to do something,
(vii) which he would not do or omit to do,
(viii) if he were not so deceived.
(ix) and which act or omission causes or is likely to cause damage or harm to that person in body, mind,
reputation and property,
(x) is said to "Cheat"

This clearly shows that fraudulent inducement is an essential ingredient and it is well settled that such

an inducement or element of inducement must be present at the commencement of the contract in question. In the present case the complainant does not disclose that there was initially an inducement on the part of the accused, when the contract had taken place. In absence of any such allegation in the complaint, it would not be possible for this Court to substantiate the contention raised in the complaint.

##. In that view of the matter when the offence in question has not been prima facie made out, it would not be just, legal and proper to direct the accused person to face the trial and appear before the trial Court till the trial is over.

##. In above view of the matter when the complaint does not disclose the offence of cheating, even prima facie, it would be just and proper for this Court to invoke the power under Section 482 of the Criminal Procedure Code and to quash the said Criminal Case.

##. For the foregoing reasons, this application is allowed, Criminal Case No.133/1998 pending before the learned Chief Judicial Magistrate, Vadodara is ordered to be quashed. Rule is made absolute to the above extent.

(D. P. BUCH , J.)
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